

U.S.S.N. 10/065,639

-7-

3707 (LC 0101 PUS)

REMARKS

Claims 12-17 and 19 and 21 are currently pending in the above application.

Claims 12-17 and 19 and 21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Hudkins et al. (U.S. Patent No. 6,296,733) in view of Bell et al. (U.S. Patent No. 6,787,593). Applicants respectfully traverse the Examiner's rejection

Section 2143 of the Manual of Patent Examining Procedure states that three basic criteria must be met for establishing a *prima facie* case of obviousness, stating:

"First, there must some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach all of the claim limitations."

"If the examiner does not establish a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." Section 2142 MPEP, ch. 2100, p. 110. "When the references cited by the Examiner fail to establish a *prima facie* case of obviousness, the rejection is improper and will be overturned."¹ One cannot use hindsight reconstruction, picking and choosing among isolated disclosures in the prior art, to deny that the claimed invention is unobvious.²

Here, the combination of Hudkins and Bell do not teach all of the claim limitations of claims 12-17, 19 and 21.

¹ *In re Ochiai*, 71 F.3d 1565, 37 U.S.P.Q.2d 1127 (Fed. Cir. 1995), *citing In re Fine*, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

² *In re Fine*, 837 F.2d at 1075.

U.S.S.N. 10/065,639

-8-

3707 (LC 0101 PUS)

Hudkins et al. discloses a floor mat, and method for making the floor mat, for covering a motor vehicle flooring system having a plurality of fibers. The floor mat includes a thermoplastic layer having first and second surfaces and a plurality of projections extending from the second surface. The thermoplastic layer is said to be recyclable and may be coupled to, or used without, a cover layer, depending upon the application. Each of the projections includes an elongated body portion and an enlarged tip for engaging the fibers. No information is given as to the composition of the thermoplastic backing material, although, as shown in Column 8, beginning at line 57, the thermoplastic material must be capable of being extracted from a mold without significant deleterious effect on the projections.

Thus, Hudkins alone does not teach a mat having a rubber-like thermoplastic backing material comprising an ethylene-octene copolymer formed using a metallocene catalyst as in claim 12, much less having the particular combination of ethylene-octene copolymers having the melt indices and other properties as found in dependent claims 13-17 and 19 nor in independent claim 21.

Bell et al. discloses the use of highly filled metallocene ethylene-octene copolymers having a melt index between about 1 and 10 for use in a sound-deadening backing sheet for use in unsupported sheets, parts or carpet backing. The addition of large amounts of filler, in conjunction with the ethylene-octene copolymer melt index range, are both crucial in Bell to achieve far superior sound absorbing capabilities while meeting the demand of balanced properties of impact strength, tensile, elongation, flex modulus and specific gravity. These composite materials also satisfy the requirements of resistance to cold, mildew fogging and flammability.

In order to meet the requirements of Section 2143, Bell must therefore teach the limitations that are not present in Hudkins, namely Bell must teach a thermoplastic rubber like backing material made using an ethylene-octene copolymer for claims 12-17, 19 and 21. The material, at the same time, must not prevent another limitation of the claims in so

U.S.S.N. 10/065,639

-9-

3707 (LC 0101 PUS)

doing, namely that the material may form a complete set of nibs. The combination of Hudkins and Bell simply cannot achieve this result, because to make Bell work in the presently claimed invention, a substantial portion of the filler would have to be removed from the ethylene-octene copolymer having a melt index between 1 and 10 (i.e. making it not "highly filled") in order to give it the flow characteristics necessary to achieve the desired result (rubber like thermoplastic material having the flow characteristics to form the nibs). Thus, the Examiner has not established a *prima facie* case of obviousness as required by Section 2143 with regards to claims 12-17, 19 and 21.

Further, for claims 14 and 21, Bell must also teach an additional limitation, that being the introduction of an ethylene-octene copolymer having a melt index between 25 and 35. Bell does not teach this melt index range. As such, the Examiner has additionally not established a *prima facie* case of obviousness as required by Section 2143 with regards to claims 14 and 21 because it does not teach this limitation. Applicants further note that the addition of a copolymer having this melt index range was not and likely would not be contemplated in Bell, in that such a range would negatively impact the sound absorbing capabilities in Bell while meeting the demand of balanced properties of impact strength, tensile, elongation, flex modulus and specific gravity and also satisfy the requirements of resistance to cold, mildew fogging and flammability. Reconsideration of claims 14 and 21 is thus requested for these additional reasons.

The Examiner has also indicated, in Paragraph 8 of the Office Action, that "mere lawyers arguments unsupported by factual evidence are insufficient to establish unexpected results." Applicants submit that the arguments don't require the introduction of factual evidence regarding the formation of nibs, but merely requires that the Examiner compare the actual claim language to the cited references in order to understand that the cited references do not teach the presently claimed invention. However, Applicants have herein provided a signed declaration stating that nibs cannot be formed utilizing the highly filled ethylene-octene copolymer having a melt index of between about 1 and 10 as in Bell. The declaration also indicates that both the highly filled nature and specific melt index

U.S.S.N. 10/065,639

-10-

3707 (LC 0101 PUS)

disclosed in Bell are both necessary features to achieve the desired result in Bell, and that changing either feature thus would not be contemplated because it would negatively impact the features of the final product.

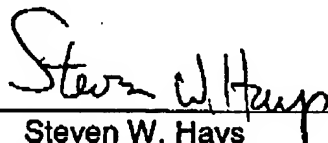
In response to Paragraph 9, ordinary understanding of melt flow properties and how to increase or decrease melt flow properties, does not cure the Examiner's deficiency in establish a *prima facie* case of obviousness in the presently claimed invention. The fact is, the combination of Hudkins and the highly filled ethylene-octene copolymer is Bell does not teach a rubber-like thermoplastic mat having a plurality of nibs.

Similarly, with respect to Paragraph 10, Applicants have never stated that the present claims exclude filler, but have instead consistently stated that the material comprising the thermoplastic layer have rubber-like properties and the ability to form complete nibs thereon, and that it is not possible to achieve these characteristics by combining the teachings Hudkins and Bell, contrary to the Examiner's position.

Applicants respectfully suggest that claims 12-17, 19, and 21 are allowable. The Examiner is invited to telephone the Applicants' undersigned attorney at (248) 223-9500 if any unresolved matters remain.

Respectfully submitted,

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Dated: July 7, 2005